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*Changes to legislation: Social Security Act 1989, SCHEDULE 5 is up to date with all changes known to be in force on or before 27 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## SCHEDULES

### SCHEDULE 5

Section 23.

#### EMPLOYMENT-RELATED SCHEMES FOR PENSIONS OR OTHER BENEFITS: EQUAL TREATMENT FOR MEN AND WOMEN

#### PART I

##### COMPLIANCE BY SCHEMES

##### *Schemes to comply with the principle of equal treatment*

- 1 Every employment-related benefit scheme shall comply with the principle of equal treatment.

##### **Commencement Information**

- II** Sch. 5 Pt. I para. 1 partly in force; Sch. 5 Pt. I para. 1 not in force at Royal Assent see s. 33(2)(3); Sch. 5 Pt. I para. 1 in force for specified purposes at 23.6.1994 by [S.I. 1994/1661](#), art. 2, [Sch. Pt. I](#)

##### *The principle*

- 2 (1) The principle of equal treatment is that persons of the one sex shall not, on the basis of sex, be treated less favourably than persons of the other sex in any respect relating to an employment-related benefit scheme.
- (2) Sub-paragraphs (3) to (6) below have effect, where applicable, for the purpose of determining whether a scheme complies with the principle of equal treatment.
- (3) Where any provision of the scheme imposes on both male and female members a requirement or condition—
- which is such that the proportion of persons of the one sex (“the sex affected”) who can comply with it is considerably smaller than the proportion of persons of the other sex who can do so, and
  - which is not justifiable irrespective of the sex of the members,
- the imposition of that requirement or condition shall be regarded as less favourable treatment of persons of the sex affected.
- (4) No account shall be taken of—
- any difference, on the basis of the sex of members, in the levels of contributions—
    - which members are required to make, to the extent that the difference is justifiable on actuarial grounds, or

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- (ii) which the employer makes, to the extent that the difference is for the purpose of removing or limiting differences, as between men and women, in the amount or value of money purchase benefits;
- (b) any difference, on the basis of sex, in the amount or value of money purchase benefits, to the extent that the difference is justifiable on actuarial grounds;
- (c) any special treatment for the benefit of women in connection with pregnancy or childbirth;
- (d) any permitted age-related differences;
- (e) any difference of treatment in relation to benefits for a deceased member's surviving husband, wife or other dependants;
- (f) any difference of treatment in relation to any optional provisions available; or
- (g) any provisions of a scheme to the extent that they have been specially arranged for the benefit of one particular member of the scheme

**F1** .....

- (5) Where the scheme treats persons of the one sex differently according to their marital or family status, that treatment is to be compared with the scheme's treatment of persons of the other sex who have the same status.
- (6) The principle of equal treatment applies in relation to members' dependants as it applies in relation to members.
- (7) If any question arises whether a condition or requirement falling within subparagraph (3)(a) above is or is not justifiable irrespective of the sex of the members, it shall be for those who assert that it is so justifiable to prove that fact.
- (8) In this paragraph—
  - “money purchase benefits” has the same meaning given by [F2section 181(1) of the Pension Schemes Act 1993], but with the substitution for references to a personal or occupational pension scheme of references to an employment-related benefit scheme;
  - “optional provisions available” means those provisions of a scheme—
    - (a) which apply only in the case of members who elect for them to do so; and
    - (b) whose purpose is to secure for those members—
      - (i) benefits in addition to those otherwise provided under the scheme; or
      - (ii) a choice with respect to the date on which benefits under the scheme are to commence; or
      - (iii) a choice between any two or more benefits;
  - “permitted age-related difference” means any difference, on the basis of sex, in the age—
    - (a) at which a service-related benefit in respect of old age or retirement commences; or
    - (b) at which, in consequence of the commencement of such a benefit, any other service-related benefit either ceases to be payable or becomes payable at a reduced rate calculated by reference to the amount of the benefit so commencing.
- (9) For the purposes of this paragraph—
  - (a) any reference to a person's family status is a reference to his having an unmarried partner or any dependants; and

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- (b) a person “has an unmarried partner” if that person and some other person to whom he is not married live together as husband and wife.

#### Textual Amendments

- F1** Words in Sch. 5 para. 2(4) repealed (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, Sch. 27 Pt. 1 (with ss. 6(4), 205) (as substituted by S.I. 2010/2279, arts. 1(2), 13, Sch. 2); S.I. 2010/2317, art. 2(15)(c)(f) (with art. 15)
- F2** Words in Sch. 5 para. 2(8) substituted (7.2.1994) by 1993 c. 48, s. 190, Sch. 7 para. 2(a); S.I. 1994/86, art. 2

#### Commencement Information

- I2** Sch. 5 para. 2 partly in force; Sch. 5 para. 2 not in force at Royal Assent see s. 33(2); Sch. 5 para. 2(1)(2)(4)(c)(5)(9) in force at 23.6.1994 by S.I. 1994/1661, art. 2, Sch. Pt. I

#### *Non-compliance: compulsory levelling up*

- 3 (1) To the extent that any provision of an employment-related benefit scheme does not comply with the principle of equal treatment, it shall be overridden by this Schedule and the more favourable treatment accorded to persons of the one sex shall also be accorded to persons of the other sex.
- (2) Where more favourable treatment is accorded to any persons by virtue of sub-paragraph (1) above, that sub-paragraph requires them, in accordance with the principle of equal treatment—
- (a) to pay contributions at a level appropriate to the treatment so accorded; and
- (b) to bear any other burden which is an incident of that treatment;
- but persons of either sex may instead elect to receive the less favourable treatment and, in accordance with the principle of equal treatment, pay contributions at the level appropriate to that treatment and bear the other burdens incidental to it.
- (3) Where any provision of a scheme is overridden by sub-paragraph (1) above, nothing in this Schedule shall affect any rights accrued or obligations incurred during the period before the date on which that provision is so overridden.
- (4) Sub-paragraph (1) above is without prejudice to the exercise, in compliance with the principle of equal treatment, of any power to amend the scheme.

#### Commencement Information

- I3** Sch. 5 para. 3 partly in force; Sch. 5 para. 3 not in force at Royal Assent see s. 33(2)(3); Sch. 5 para. 3(1)(3)(4) in force for specified purposes at 23.6.1994 by S.I. 1994/1661, art. 2, Sch. Pt. I; Sch. 5 para. 3 in force for further certain purposes at 24.8.2007 by S.I. 2007/2445, art. 2(b)

#### *Modification of schemes by the Occupational Pensions Board*

<sup>F3</sup>4

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#### Textual Amendments

- F3** Sch. 5 Pt. I para. 4 repealed (6.4.1997) by 1995 c. 26, ss. 151, 177, Sch. 5 para. 13(2), Sch. 7 Pt. III; S.I. 1997/664, art. 2, Sch. Pt. II

#### *Unfair maternity provisions*

5 **F4** .....

#### Textual Amendments

- F4** Sch. 5 para. 5 repealed (1.10.2010) by Equality Act 2010 (c. 15), ss. 211, 216, Sch. 27 Pt. 1 (with ss. 6(4), 205) (as substituted by S.I. 2010/2279, arts. 1(2), 13, Sch. 2); S.I. 2010/2317, art. 2(15)(c)(f) (with art. 15)

#### *<sup>F5</sup>Unfair paternity leave provisions*

#### Textual Amendments

- F5** Sch. 5 paras. 5A, 5B inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 265(1), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (subject to art. 2(12))

- 5A (1) Where an employment-related benefit scheme includes any unfair paternity leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—
- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3), this Schedule shall apply accordingly.
- (2) In this paragraph “unfair paternity leave provisions”, in relation to an employment-related benefit scheme, means any provision—
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid paternity leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or
  - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid paternity leave, to be determined otherwise than in accordance with the normal employment requirement.
- (3) In the case of any unfair paternity leave provision—
- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
  - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;

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but, in respect of any period of paid paternity leave, a member shall only be required to pay contributions on the amount of contractual remuneration [<sup>F6</sup>or statutory paternity pay] actually paid to or for him in respect of that period.

(4) In this paragraph—

“period of paid paternity leave”, in the case of a member, means a period—

- (a) <sup>F7</sup> throughout which the member is absent from work in circumstances where sub-paragraph (5), (6) [<sup>F8</sup>, (7) [<sup>F9</sup>, (7A) or (7B) ] ... ] applies, and
- (b) for which the employer (or if he is no longer in his employment, his former employer) pays him any contractual remuneration [<sup>F10</sup>or statutory paternity pay]; and

“the normal employment requirement” is the requirement that any period of paid paternity leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so.

(5) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the birth or expected birth of a child, and
- (b) the member satisfies the conditions prescribed under section 171ZA(2)(a) (i) and (ii) of the Social Security Contributions and Benefits Act 1992 in relation to that child.

(6) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the placement or expected placement of a child for adoption under the law of any part of the United Kingdom, and
- (b) the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of that Act in relation to that child.

(7) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and
- (b) the member satisfies the conditions prescribed under section 171ZB(2)(a) (i) and (ii) of that Act (as applied by virtue of [<sup>F11</sup>section 171ZK(1)] of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child.

[ This sub-paragraph applies if—

- <sup>F12</sup>(7A) (a) the member's absence from work is due to the placement or expected placement of a child under section 22C of the Children Act 1989 [<sup>F13</sup>or section 81 of the Social Services and Well-being (Wales) Act 2014], and

[<sup>F14</sup>(b) in relation to that child, the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of the Social Security Contributions and Benefits Act 1992, as modified—

- (i) in relation to a local authority in England, by section 171ZB(8) of that Act (cases involving the placing of a child by a local authority in England with a local authority foster parent who has been approved as a prospective adopter);

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- (ii) in relation to a local authority in Wales, by section 171ZB(10) of that Act (cases involving the placing of a child by a local authority in Wales with a local authority foster parent who has been approved as a prospective adopter)]

(7B) This sub-paragraph applies if—

- (a) the member's absence from work is due to the birth or expected birth of a child, and
- (b) in relation to that child, the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of the Social Security Contributions and Benefits Act 1992, as applied by virtue of section 171ZK(2) of that Act (cases involving applicants for parental orders under section 54 of the Human Fertilisation and Embryology Act 2008).]

<sup>F15</sup>(8) .....

#### Textual Amendments

- F6** Words in Sch. 5 para. 5A(3)(b) substituted (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 2\(2\)](#); S.I. 2014/1640, art. 7(a) (with art. 16)
- F7** Words in Sch. 5 para. 5A(4) repealed (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 2\(3\)\(b\)](#); S.I. 2014/1640, art. 7(a) (with art. 16)
- F8** Words in Sch. 5 para. 5A(4)(a) substituted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), ss. 11(1), 19(1), [Sch. 1 para. 1\(3\)\(a\)](#); S.I. 2010/495, art. 4(d)
- F9** Words in Sch. 5 para. 5A(4) inserted (1.12.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 2\(3\)\(a\)](#); S.I. 2014/1640, art. 5(2)(a)
- F10** Words in Sch. 5 para. 5A(4) substituted (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 2\(3\)\(c\)](#); S.I. 2014/1640, art. 7(a) (with art. 16)
- F11** Words in Sch. 5 para. 5A(7) substituted (30.6.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 2\(4\)](#); S.I. 2014/1640, art. 3(2)(b)
- F12** Sch. 5 para. 5A(7A), (7B) inserted (1.12.2014 for specified purposes) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 2\(5\)](#); S.I. 2014/1640, art. 5(2)(a)
- F13** Words in Sch. 5 para. 5A(7A)(a) inserted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [54\(a\)](#)
- F14** Sch. 5 para. 5A(7A)(b) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [54\(b\)](#)
- F15** Sch. 5 para. 5A(8) repealed (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 2\(6\)](#); S.I. 2014/1640, art. 7(a) (with arts. 1618)

#### Modifications etc. (not altering text)

- C1** Sch. 5 para. 5A: power to apply (with modifications) conferred (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), [ss. 265\(2\)](#), [322\(1\)](#) (with s. 313); S.I. 2005/275, [art. 2\(7\)](#), [Sch. Pt. 7](#) (subject to [art. 2\(12\)](#))

#### *Unfair adoption leave provisions*

- 5B (1) Where an employment-related benefit scheme includes any unfair adoption leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—
- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3), this Schedule shall apply accordingly.

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(2) In this paragraph “unfair adoption leave provisions”, in relation to an employment-related benefit scheme, means any provision—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid adoption leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or
- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid adoption leave, to be determined otherwise than in accordance with the normal employment requirement.

(3) In the case of any unfair adoption leave provision—

- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
- (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;

but, in respect of any period of paid adoption leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory adoption pay actually paid to or for him in respect of that period.

(4) In this paragraph—

“period of paid adoption leave”, in the case of a member, means a period—

- (a) throughout which the member is absent from work in circumstances where sub-paragraph (5)[<sup>F16</sup>, (6), (7) or (8)] applies, and
- (b) for which the employer (or, if he is no longer in his employment, his former employer) pays him any contractual remuneration or statutory adoption pay; and

“the normal employment requirement” is the requirement that any period of paid adoption leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so.

(5) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the placement, or expected placement, of a child for adoption under the law of any part of the United Kingdom, and
- (b) the member is a person with whom the child is, or is expected to be, placed for such adoption.

(6) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and
- (b) the member is a person by whom the child has been or is expected to be adopted.]

[<sup>F17</sup>(7) This sub-paragraph applies if—

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- (a) the member's absence from work is due to the placement or expected placement of a child under section 22C of the Children Act 1989 [<sup>F18</sup>or section 81 of the Social Services and Well-being (Wales) Act 2014], and
  - [<sup>F19</sup>(b) in relation to that child, the member satisfies the condition in section 171ZL(2)(a) of the Social Security Contributions and Benefits Act 1992, as modified—
    - (i) in relation to a local authority in England, by section 171ZL(9) of that Act (cases involving the placing of a child by a local authority in England with a local authority foster parent who has been approved as a prospective adopter);
    - (ii) in relation to a local authority in Wales, by section 171ZL(11) of that Act (cases involving the placing of a child by a local authority in Wales with a local authority foster parent who has been approved as a prospective adopter).]
- (8) This sub-paragraph applies if—
- (a) the member's absence from work is due to the birth or expected birth of a child, and
  - (b) in relation to that child, the member satisfies the condition in section 171ZL(2)(a) of the Social Security Contributions and Benefits Act 1992, as applied by virtue of section 171ZT(2) of that Act (cases involving applicants for parental orders under section 54 [<sup>F20</sup>or 54A] of the Human Fertilisation and Embryology Act 2008).]

#### Textual Amendments

- F16** Words in Sch. 5 para. 5B(4) substituted (1.12.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 3\(2\)](#); S.I. 2014/1640, art. 5(2)(b)
- F17** Sch. 5 para. 5B(7), (8) inserted (1.12.2014 for specified purposes) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 3\(3\)](#); S.I. 2014/1640, art. 5(2)(b)
- F18** Words in Sch. 5 para. 5B(7)(a) inserted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\), regs. 2\(1\), 54\(c\)](#)
- F19** Sch. 5 para. 5B(7)(b) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\), regs. 2\(1\), 54\(d\)](#)
- F20** Words in Sch. 5 para. 5B(8)(b) inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\), art. 1\(1\), Sch. 1 para. 2](#)

#### Modifications etc. (not altering text)

- C2** Sch. 5 para. 5B: power to apply (with modifications) conferred (6.4.2005) by [Pensions Act 2004 \(c. 35\), ss. 265\(2\), 322\(1\)](#) (with s. 313); S.I. 2005/275, [art. 2\(7\)](#), Sch. Pt. 7 (subject to art. 2(12))

#### *[<sup>F21</sup>Unfair shared parental leave provisions*

#### Textual Amendments

- F21** and cross-heading inserted (1.12.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 4](#); S.I. 2014/1640, art. 5(2)(c)



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- 5C (1) Where an employment-related benefit scheme includes any unfair shared parental leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—
- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3), this Schedule shall apply accordingly.
- (2) In this paragraph “unfair shared parental leave provisions”, in relation to an employment-related benefit scheme, means any provision—
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid shared parental leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or
  - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid shared parental leave, to be determined otherwise than in accordance with the normal employment requirement.
- (3) In the case of any unfair shared parental leave provision—
- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
  - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;
- but, in respect of any period of paid shared parental leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory shared parental pay actually paid to or for the member in respect of that period.
- (4) In this paragraph—
- “the normal employment requirement” is the requirement that any period of paid shared parental leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so;
- “period of paid adoption leave” has the same meaning as in paragraph 5B;
- “period of paid paternity leave” has the same meaning as in paragraph 5A;
- “period of paid shared parental leave”, in the case of a member, means a period—
- (a) throughout which the member is absent from work in circumstances where sub-paragraph (5), (6), (7), (8), (9) or (10) applies, and
  - (b) for which the employer (or if the member is no longer in that person's employment, his former employer) pays the member any contractual remuneration or statutory shared parental pay.
- (5) This sub-paragraph applies if—
- (a) the member's absence from work is due to the birth of a child,
  - (b) the member is the mother of the child, and
  - (c) the absence from work is not absence on maternity leave (within the meaning of the Equality Act 2010).
- (6) This sub-paragraph applies if—

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- (a) the member's absence from work is due to the birth of a child,
- (b) the member is a person who satisfies the conditions prescribed under section 171ZU(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992 in relation to the child, and
- (c) the member's absence from work is not absence during a period of paid paternity leave.

(7) This sub-paragraph applies if—

- (a) the member's absence from work is due to the placement of a child for adoption under the law of any part of the United Kingdom,
- (b) the member is—
  - (i) a person with whom a child is placed for adoption under the law of any part of the United Kingdom, or
  - (ii) a person who satisfies the conditions prescribed under section 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992 in relation to the child, and
- (c) the member's absence from work is not absence during—
  - (i) a period of paid paternity leave, or
  - (ii) a period of paid adoption leave.

(8) This sub-paragraph applies if—

- [<sup>F22</sup>(a) the member's absence from work is due to the placement of a child under—
  - (i) section 22C of the Children Act 1989 by a local authority in England, or
  - (ii) section 81 of the Social Services and Well-being (Wales) Act 2014 by a local authority in Wales,
 with a local authority foster parent who has been approved as a prospective adopter,]
- (b) the member is—
  - (i) the local authority foster parent with whom the child in question is placed under section 22C of the Children Act 1989 [<sup>F23</sup>or section 81 of the Social Services and Well-being (Wales) Act 2014], or
  - (ii) a person who satisfies the conditions prescribed under section 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992, as modified by section 171ZV(18) of that Act (cases involving the placing of a child by a local authority in England [<sup>F24</sup>or Wales] with a local authority foster parent who has been approved as a prospective adopter), in relation to the child, and
- (c) the member's absence from work is not absence during—
  - (i) a period of paid paternity leave, or
  - (ii) a period of paid adoption leave.

(9) This sub-paragraph applies if—

- (a) the member's absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve placement of the child for adoption under the law of any part of the United Kingdom,
- (b) the member is—
  - (i) the person who has adopted or expects to adopt the child in question, or

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- (ii) a person who satisfies the conditions prescribed under section 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992, as applied by virtue of section 171ZZ5(1) of that Act (adoption cases not involving placement under the law of the United Kingdom), in relation to the child, and
  - (c) the member's absence from work is not absence during—
    - (i) a period of paid paternity leave, or
    - (ii) a period of paid adoption leave.
- (10) This sub-paragraph applies if—
- (a) the member's absence from work is due to the birth of a child,
  - (b) the member is a person who has applied, or intends to apply, for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in relation to the child, and
  - (c) the member's absence from work is not absence during—
    - (i) a period of paid paternity leave, or
    - (ii) a period of paid adoption leave.]

#### Textual Amendments

- F22** Sch. 5 para. 5C(8)(a) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **54(e)**
- F23** Words in Sch. 5 para. 5C(8)(b)(i) inserted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **54(f)**
- F24** Words in Sch. 5 para. 5C(8)(b)(ii) inserted (E.W.) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **54(g)**

#### <sup>F25</sup>Unfair parental bereavement leave provisions

#### Textual Amendments

- F25** Sch. 5 para. 5D and cross-heading inserted (18.1.2020) by [Parental Bereavement \(Leave and Pay\) Act 2018 \(c. 24\)](#), s. 2(2), **Sch. para. 7**; S.I. 2020/45, reg. 2

- 5D (1) Where an employment-related benefit scheme includes any unfair parental bereavement leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—
- (a) the scheme is to be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3), this Schedule is to apply accordingly.
- (2) In this paragraph “unfair parental bereavement leave provisions”, in relation to an employment-related benefit scheme, means any provision—
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid parental bereavement leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or

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- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid parental bereavement leave, to be determined otherwise than in accordance with the normal employment requirement.
- (3) In the case of any unfair parental bereavement leave provision—
- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
  - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;
- but, in respect of any period of paid parental bereavement leave, a member is only required to pay contributions on the amount of contractual remuneration or statutory parental bereavement pay actually paid to or for the member in respect of that period.
- (4) In this paragraph—
- “the normal employment requirement” is the requirement that any period of paid parental bereavement leave is to be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so;
- “period of paid parental bereavement leave”, in the case of a member, means any period—
- (a) throughout which a member who is a bereaved parent (within the meaning given by section 171ZZ6(3) of the Social Security Contributions and Benefits Act 1992) is absent from work due to the death of a child, otherwise than by virtue of a period of leave mentioned in sub-paragraph (5); and
  - (b) for which the employer (or if the member is no longer in that person's employment, his former employer) pays the member any contractual remuneration or statutory parental bereavement pay.
- (5) The periods of leave referred to in paragraph (a) of the definition of “period of paid parental bereavement leave” are—
- (a) a period of paid paternity leave (within the meaning of paragraph 5A),
  - (b) a period of maternity leave (within the meaning of the Equality Act 2010),
  - (c) a period of paid adoption leave (within the meaning of paragraph 5B), or
  - (d) a period of shared parental leave (within the meaning of paragraph 5C).]

#### *Unfair family leave provisions*

- 6 (1) Where an employment-related benefit scheme includes any unfair family leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—
- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3) below, this Schedule shall apply accordingly.
- (2) In this Schedule “unfair family leave provisions” means any provision—
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid family leave in the case of any member

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who is an employed earner and which treats such a member otherwise than in accordance with the normal leave requirement; or

- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member to the extent that it falls to be determined by reference to earnings during a period which included a period of paid family leave, to be determined otherwise than in accordance with the normal leave requirement.

(3) In the case of any unfair family leave provision—

- (a) the more favourable treatment required by paragraph 3(1) above is treatment no less favourable than would be accorded to the members in accordance with the normal leave requirement;
- (b) paragraph 3(2) above does not authorise the making of any such election as is there mentioned; and
- (c) paragraph 4(1)(a) above does not authorise the making of any modification which does not satisfy the requirements of paragraph (a) above;

but, in respect of a period of paid family leave, a member shall only be required to pay contributions on the amount of contractual remuneration actually paid to or for him in respect of that period.

(4) In this paragraph—

- (a) “period of paid family leave” means any period—
  - (i) throughout which a member is absent from work for family reasons; and
  - (ii) for which the employer pays him any contractual remuneration;
- (b) “the normal leave requirement” is the requirement that any period of paid family leave shall be treated as if it were a period throughout which the member in question works normally but only receives the remuneration in fact paid to him for that period.

#### Commencement Information

**I4** Sch. 5 Pt. I para. 6 partly in force; Sch. 5 Pt. I para. 6 not in force at Royal Assent see s. 33(2)(3); Sch. 5 Pt. I para. 6(1)(2)(3)(a)(4) in force at 23.6.1994 by [S.I. 1994/1661](#), art. 2, **Sch. Pt. II**

*Meaning of “employment-related benefit scheme” etc.*

7 In this Schedule—

- (a) “employment-related benefit scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide service-related benefits to or in respect of employed or self-employed earners—
  - (i) who have qualifying service in an employment of any such description or category, or
  - (ii) who have made arrangements with the trustees or managers of the scheme to enable them to become members of the scheme,
 but does not include a limited scheme;
- (b) “limited scheme” means—

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- (i) any personal scheme for employed earners to which the employer does not contribute;
- (ii) any scheme which has only one member, other than a personal scheme for an employed earner to which his employer contributes;
- (iii) any contract of insurance which is made for the benefit of employed earners only and to which the employer is not a party;
- (c) “personal scheme” means any scheme or arrangement which falls within paragraph (a) above by virtue of sub-paragraph (ii) of that paragraph (or which would so fall apart from paragraph (b) above);
- (d) “public service scheme” has [<sup>F26</sup>the same meaning as “public service pension scheme” in section 1 of the Pension Schemes Act 1993];
- (e) “service-related benefits” means benefits, in the form of pensions or otherwise, payable in money or money’s worth in respect of—
  - (i) termination of service;
  - (ii) retirement, old age or death;
  - (iii) interruptions of service by reason of sickness or invalidity;
  - (iv) accidents, injuries or diseases connected with employment;
  - (v) unemployment; or
  - (vi) expenses incurred in connection with children or other dependants;
 and includes, in the case of a member who is an employed earner, any other benefit so payable to or in respect of the member in consequence of his employment.

#### Textual Amendments

**F26** Words in Sch. 5 para. 7(d) substituted (7.2.1994) by 1993 c. 48, s. 190, **Sch. 7 para. 2(b)**; S.I. 1994/86, **art. 2**

#### Commencement Information

**I5** Sch. 5 Pt. I para. 7 partly in force; Sch. 5 Pt. I para. 7 not in force at Royal Assent see s. 33(2)(3); Sch. 5 Pt. I para. 7(a)-(c)(e) in force for specified purposes at 23.6.1994 by S.I. 1994/1661, **art. 2**, **Sch. Pt. I**

PROSPECTIVE

#### *Extension of ban on compulsory membership*

- 8 [<sup>F27</sup>Section 160(1) of the Pension Schemes Act 1993] (which renders void any provision making membership of a pension scheme compulsory for an employed earner) shall apply in relation to a self-employed earner as it applies in relation to an employed earner, but with the substitution for references to a personal pension scheme of references to an employment-related benefit scheme which would be such a pension scheme if self-employed earners were regarded as employed earners.

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### Textual Amendments

- F27** Words in Sch. 5 para. 8 substituted (7.2.1994) by 1993 c. 48, s. 190, **Sch. 7 para. 2(c)**; S.I. 1994/86, **art. 2**

### Jurisdiction

- 9 (1) The court, on the application of any person interested, shall have jurisdiction to determine any question arising as to—
- (a) whether any provision of an employment-related benefit scheme does or does not comply with the principle of equal treatment; or
  - (b) whether, and with what effect, any such provision is overridden by paragraph 3 above.
- (2) In sub-paragraph (1) above “the court” means—
- (a) in England and Wales, the High Court or [<sup>F28</sup>the county court]; and
  - (b) in Scotland, the Court of Session or the sheriff court.
- (3) An application under sub-paragraph (1) above may be commenced in [<sup>F28</sup>the county court] notwithstanding—
- (a) any financial limit otherwise imposed on the jurisdiction of [<sup>F29</sup>that] court; or
  - (b) that the only relief claimed is a declaration or an injunction.

### Textual Amendments

- F28** Words in Sch. 5 para. 9 substituted (22.4.2014) by **Crime and Courts Act 2013 (c. 22)**, s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, **art. 2(c)** (with **art. 3**) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F29** Word in Sch. 5 para. 9(3)(a) substituted (22.4.2014) by **Crime and Courts Act 2013 (c. 22)**, s. 61(3), **Sch. 9 para. 128**; S.I. 2014/954, **art. 2(c)** (with **art. 3**) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

### Commencement Information

- I6** Sch. 5 Pt. I para. 9 partly in force; Sch. 5 Pt. I para. 9 not in force at Royal Assent see s. 33(2)(3); Sch. 5 Pt. I para. 9 in force for specified purposes at 23.6.1994 by S.I. 1994/1661, **art. 2**, **Sch. Pt. I**

### Interpretation

- 10 Expressions other than “benefit” which are used in this Part of this Schedule and in the principal Act have the same meaning in this Part of this Schedule as they have in that Act.

### Commencement Information

- I7** Sch. 5 Pt. I para. 10 partly in force; Sch. 5 Pt. I para. 10 not in force at Royal Assent see s. 33(2)(3); Sch. 5 Pt. I para. 10 in force for specified purposes at 23.6.1994 by S.I. 1994/1661, **art. 2**, **Sch. Pt. I**

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### *Supplemental*

F30 11 .....

#### **Textual Amendments**

**F30** Sch. 5 para. 11 repealed (7.2.1994) by 1993 c. 48, s. 118, **Sch. 5 Pt.I**; S.I. 1994/86, **art. 2**

PROSPECTIVE

#### *Future repeal of actuarial provisions*

12 The Secretary of State may by order repeal paragraph 2(4)(a)(i) above; and if and to the extent that he has not done so before 30th July 1999 it shall cease to have effect on that date.

## PART II

### AMENDMENT OF ENACTMENTS RELATING TO EMPLOYMENT

#### *Equal Pay Act 1970 (c.41)*

F31 13 .....

#### **Textual Amendments**

**F31** Sch. 5 para. 13 repealed (7.2.1994) by 1993 c. 48, s. 188, **Sch. 5 Pt.I**; S.I. 1994/86, **art. 2**

#### *Sex Discrimination Act 1975 (c.65)*

F32 14 .....

#### **Textual Amendments**

**F32** Sch. 5 Pt. II para. 14 repealed (6.4.1997) by 1995 c. 26, s.177, **Sch. 7 Pt. I**; S.I. 1997/664, **art. 2**, **Sch. Pt. II**

#### *Employment Protection (Consolidation) Act 1978 (c.44)*

F33 15 .....

#### **Textual Amendments**

**F33** Sch. 5 para. 15 repealed (10.6.1994) by 1993 c. 19, s. 51, **Sch.10**; S.I. 1994/1365, **art. 2**, **Sch.** (with transitional provisions in **art. 3**)



**Status:**

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**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 5 para. 5E and cross-heading inserted by [2023 c. 20 Sch. para. 7](#)